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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15
16 ELECTRONIC FRONTIER FOUNDATION,) Case No. 3:10-cv-04892-RS
17 Plaintiff,)
18 v.) **SECOND DECLARATION OF
19 DEPARTMENT OF JUSTICE,) JENNIFER LYNCH IN SUPPORT OF
20 Defendant.) PLAINTIFF'S CROSS MOTION FOR
21) SUMMARY JUDGMENT AND
22) OPPOSITION TO DEFENDANT'S
23) MOTION FOR SUMMARY
24) JUDGMENT
25)
26) Date: May 10, 2012
27) Time: 1:30 p.m.
28) Place: Ctrm. 3, 17th Floor
Case No. 3:10-cv-04892-RS) Judge: Hon. Richard Seeborg
Case No. 3:10-cv-04892-RS)
SECOND DECLARATION OF JENNIFER LYNCH IN SUPPORT OF
PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT**

1 1. I am an attorney of record for the plaintiff in this matter and a member in good
 2 standing of the California State Bar, and I am admitted to practice before this Court. I have
 3 personal knowledge of the matters stated in this declaration. If called upon to do so, I am
 4 competent to testify to all matters set forth herein.

5 2. Plaintiff Electronic Frontier Foundation (EFF) is a nonprofit corporation established
 6 under the laws of the Commonwealth of Massachusetts with offices in San Francisco, California
 7 and Washington, D.C. EFF is a donor-supported membership organization that works to inform
 8 policymakers and the general public about civil liberties issues related to technology and to act as a
 9 defender of those liberties. In support of its mission, EFF uses the Freedom of Information Act
 10 (FOIA) to obtain and disseminate information concerning the activities of federal agencies.

11 3. On May 21, 2009, EFF faxed a FOIA request to the FBI for all agency records,
 12 including electronic records, concerning the FBI's Going Dark Program. This request is attached as
 13 Exhibit 1 to the Lynch Declaration filed in support of Plaintiff's Motion for Partial Summary
 14 Judgment on January 6, 2011 (Dkt. 16).

15 4. On September 28, 2010, EFF faxed a FOIA request to the FBI, the Department of
 16 Justice Criminal Division (CRIM), and the Drug Enforcement Agency (DEA) requesting all
 17 agency records discussing, concerning, or reflecting the FBI's efforts to expand its ability to
 18 conduct surveillance on electronic communications systems and any information related to
 19 proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).
 20 This request is attached as Exhibit 8 to the Lynch Declaration filed in support of Plaintiff's Motion
 21 for Partial Summary Judgment on January 6, 2011 (Dkt. 16).

22 5. Attached hereto as Exhibit 1 are true and correct copies of responsive records from
 23 DEA.

24 6. Attached hereto as Exhibit 2 are true and correct copies of responsive records from
 25 CRIM.

26 7. On March 15, 2012, after reviewing the materials FBI filed in support of
 27 Defendants' Motion for Summary Judgment, I emailed Defendant's counsel to see if FBI could
 28

1 point to final versions of multiple draft documents it withheld in full. On March 20, 2012,
2 Defendants' counsel, Mr. Cartier, responded via email that FBI had no "final" versions of these
3 records. This email correspondence is attached at Exhibit 3.

4 8. Attached as Exhibit 4 are true and correct copies of records responsive to EFF's
5 FOIA request that FBI referred to Immigrations and Customs Enforcement (ICE). ICE then
6 released these records directly to EFF.

7
8 I declare under penalty of perjury of the laws of the State of California that the foregoing is
9 true and correct to the best of my knowledge and belief. Executed March 29, 2011 in San
10 Francisco, California.

11 */s/ Jennifer Lynch*
12 Jennifer Lynch

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

Executed on March 29, 2012, in San Francisco, California.

/s/ Jennifer Lynch
Jennifer Lynch